PART VIII.

Companies Authorized to Register under this Act.

Companies capable of being registered.

253. (1) With the exceptions and subject to the provisions mentioned and contained in this section—

any company consisting of seven or more members, which was in existence on the first day of November eighteen hundred and ninety-five may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

(2) Provided as follows:—

(*a*) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;

(*b*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose;

(*c*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assent of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Mysore Companies Act, 1895, shall not be registered in pursuance of this section.

Definition of "joint-stock company."

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say):—

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(2) a copy of any deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(*b*) the number of shares taken and the amount paid on each share;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint-stock companies.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar—

(1) a list showing the names, addresses and occupations of the directors of the company; and

(2) a copy of any deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) in the case of company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statement of existing companies.

257. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by a declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

259. (1) Where a banking company, which was in existence on the first day of November eighteen hundred and ninety-five, proposes to register as a limited company it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which the notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company, if it is not registered as a limited company.

Addition of "Limited" to name.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificates of registration of existing companies.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

Vesting of property on registration.

263. All property, movable and immovable, including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of existing liabilities.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing suits.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

266. When a company is registered in pursuance of this Part—

(*i*) all provisions contained in any deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted

in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;

(*ii*) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(*c*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act, with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(*iii*) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and

to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any deed of settlement, contract of co-partnery or other instrument constituting or regulating the company;

(*iv*) nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of co-partnery or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act;

(*v*) nothing in this Act shall derogate from any lawful power of altering its constitution or regulation which may, by virtue of any enactment at any time in force in Mysore, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

267. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles; and

(*b*) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act

with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company.

Power of Court to stay or restrain proceedings.

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

PART IX.

Winding up of Unregistered Companies.

Meaning of "unregistered company."

270. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by any enactment at any time in force in Mysore, nor a company registered under the Indian Companies Act, 1866, or under the Mysore Companies Act, 1895, or under the Mysore Companies Act, 1917, or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

Winding up of unregistered companies.

271. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(*i*) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;